

## Chapter Comm 4

### APPENDIX

The material contained in the Appendix is for clarification purposes only. The material is numbered to correspond to the number of the rule as it appears in the text of the code.

**A 4.01 PURPOSE.** The following is a reprint of s. 101.123, Stats.:

**101.123 Clean indoor air. (1) DEFINITIONS.** In this section:

(a) "Educational facility" means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

(ad) "Day care center" has the meaning given in s. 49.136 (1) (d).

(am) "Hospital" has the meaning given in s. 50.33 (2), except that "hospital" does not include a nursing home licensed under s. 50.03 that is operated in connection with a hospital or a retirement home that is operated in connection with a hospital.

(b) "Inpatient health care facility" means a county home established under s. 49.70, a county infirmary established under s. 49.72, a community-based residential facility or a nursing home licensed under s. 50.03 or a tuberculosis sanatorium established under s. 58.06, 252.073 or 252.076.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.53 (8), county house of correction under s. 303.16 or secure detention facility as defined in s. 48.02 (16).

(bm) "Lockup facility" has the meaning given in s. 302.30.

(br) "Motor bus" has the meaning given in s. 340.01 (31).

(c) "Office" means any area, whether publicly or privately owned or occupied, that serves as a place of work at which the principal activities consist of professional, clerical or administrative services.

(d) "Person in charge" means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.

(dg) "Physician's office" means a place, other than a residence or a hospital, that is used primarily to provide medical care and treatment.

(dm) "Prison" means a prison described in s. 302.01, except it does not include the correctional institution under s. 301.046 (1) if the institution is the prisoner's place of residence and does not include a Type 2 prison, as defined in s. 301.01 (6).

(e) "Public conveyance" means mass transit vehicles as defined by s. 340.01 (28m) and school buses as defined by s. 340.01 (56).

(f) "Restaurant" means an establishment defined in s. 254.61 (5) with a seating capacity of more than 50 persons.

(g) "Retail establishment" means any store or shop in which retail sales is the principal business conducted, except a tavern operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license, and except bowling centers.

(gm) "Retirement home" means a residential facility where 3 or more unrelated adults or their spouses have their principal resi-

dence and where support services, including meals from a common kitchen, are available to residents.

(h) "Smoking" means carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

(i) "State institution" means a prison, a secured correctional facility, a mental health institute as defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s. 51.01 (3), except that "state institution" does not include a Type 2 secured correctional facility, as defined in s. 938.02 (20).

**(2) REGULATION OF SMOKING.** (a) Except as provided in sub. (3), no person may smoke in the following places:

1. Public conveyances.
2. Educational facilities.
3. Inpatient health care facilities.
4. Indoor movie theaters.
5. Offices.
6. Passenger elevators.
7. Restaurants.
8. Retail establishments.
9. Public waiting rooms.
10. Any enclosed, indoor area of a state, county, city, village or town building.

(am) 1. Notwithstanding par. (a) and sub. (3) and except as provided in subd. 2., no person may smoke in a motor bus, in a hospital or in a physician's office.

2. Notwithstanding subd. 1., a person who is an adult patient of a hospital or unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism or drug abuse and who has the written permission of a physician may smoke in a room that is designated as a smoking area under sub. (4) (a) 2.

(b) The prohibition in pars. (a) and (am) 1. applies only to enclosed, indoor areas.

(bm) Notwithstanding par. (a) and sub. (3), no person may smoke on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present.

(c) This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public.

**(3) EXCEPTIONS.** The regulation of smoking in sub. (2) (a) does not apply to the following places:

(a) Areas designated smoking areas under sub. (4).

(b) Rooms in which the main occupants are smokers, even if nonsmokers are periodically present in the office or room.

(c) Entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.

(d) Restaurants holding a "Class B" intoxicating liquor or Class "B" fermented malt beverage license if the sale of intoxicat-

ing liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts.

(f) Any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale.

(gg) A Type 2 secured correctional facility, as defined in s. 938.02 (20).

(gm) The correctional institution under s. 301.046 (1) if the institution is the prisoner's place of residence.

(gr) A Type 2 prison, as defined in s. 301.01 (6).

**(4) DESIGNATION OF SMOKING AREAS.** (a) 1. Except as provided in subd. 2., a person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under sub. (2) (a) unless a fire marshal, law, ordinance or resolution prohibits smoking.

2. A person in charge or his or her agent may not designate an entire building as a smoking area or designate any smoking areas in a motor bus, hospital or physician's office or on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present, except that in a hospital or a unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism or drug abuse a person in charge or his or her agent may designate one or more enclosed rooms with outside ventilation as smoking areas for the use of adult patients who have the written permission of a physician. Subject to this subdivision and sub. (3) (b), a person in charge or his or her agent may not designate an entire room as a smoking area.

3. This paragraph does not apply to places described in par. (am).

(am) 1. The secretary of health and family services or his or her designee may designate areas where smoking is permitted in a state institution other than a prison, unless a fire marshal, law or resolution prohibits smoking in the area. The secretary of corrections or his or her designee may designate areas where smoking is permitted in a prison, unless a fire marshal, law or resolution prohibits smoking in the area. Either secretary or his or her designee may designate an entire room as a smoking area in a state institution administered by the secretary's department.

2. A person in charge of a jail or lockup facility, or his or her agent, may designate areas where smoking is permitted in the jail or lockup facility, unless a fire marshal, law or resolution prohibits smoking in the area. The person in charge or his or her agent may designate an entire room in the jail or lockup facility as a smoking area.

3. Except in a prison, secured correctional facility, jail or lockup facility, an entire building may not be designated as a smoking area.

(b) The person in charge or his or her agent shall post notice of the designation of a smoking area in or near the area designated.

If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. This paragraph does not apply to a place described in par. (bm).

(bm) The person in charge of a state institution, jail or lockup facility, or his or her agent, shall post notice of the designation of a smoking area under par. (am) in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all normally used entrances to the room. If an entire building in a prison, secured correctional facility, jail or lockup facility is designated a smoking area, the person in charge, or his or her agent, shall post notice of the designation on or near all normally used entrances to the building, but need not post notice of the designation on or near entrances to rooms within the building.

(c) The person in charge or his or her agent shall utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas. This paragraph requires no new construction of physical barriers or ventilation systems in any building.

(d) This section requires the posting of signs only in areas where smoking is permitted.

**(5) RESPONSIBILITIES.** The person in charge or his or her agent shall:

(a) Post signs identifying designated smoking areas; and

(b) Arrange seating to accommodate nonsmokers if smoking areas are adjacent to nonsmoking areas.

**(6) UNIFORM SIGNS.** The department shall, by rule, specify uniform dimensions and other characteristics of signs used to designate smoking areas. These rules may not require the use of signs that are more expensive than is necessary to accomplish their purpose.

**(7) SIGNS FOR STATE AGENCIES.** The department shall arrange with the department of administration to have the signs prepared and made available to state agencies for use in state facilities.

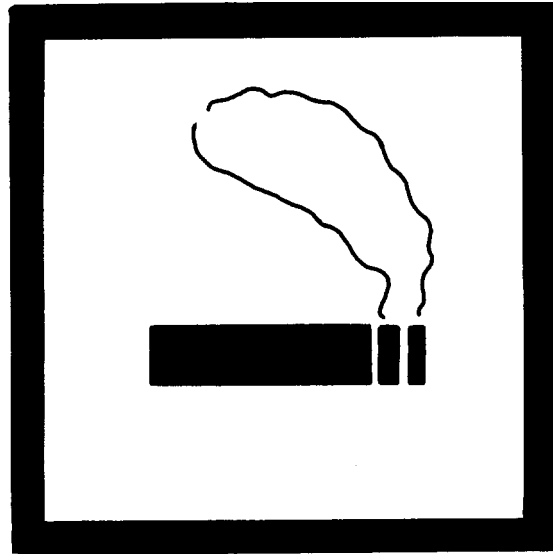
**(8) PENALTIES.** (a) Any person who wilfully violates sub. (2) (a), (am) 1. or (bm) after being advised by an employe of the facility that smoking in the area is prohibited or any person in charge or his or her agent who wilfully fails to comply with sub. (5) shall forfeit not more than \$10.

(c) A violation of this section does not constitute negligence as a matter of law.

**(9) INJUNCTION.** Notwithstanding s. 165.60, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

**History:** 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404.

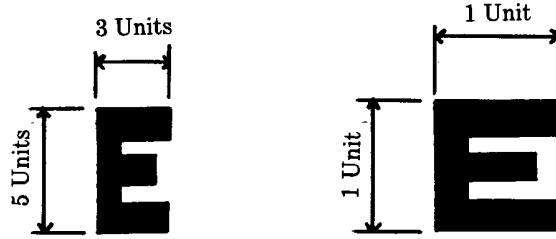
A 4.02 The following is a SAMPLE sign which conforms to the specifications outlined in this section:



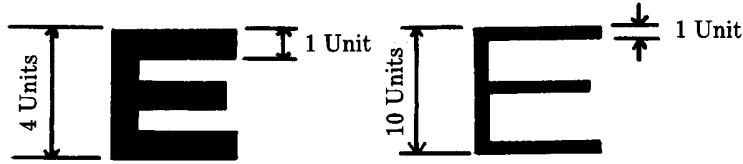
**SMOKING  
ALLOWED**

**SECTION 101.123 (4), WIS. STATS.**

A 4.02 (2) The following diagram illustrates character ratio requirements.



Width:Height Ratio



Stroke-Width:Height Ratio

A 4.02 (3) The following diagram illustrates the international symbol for smoking allowed.

